

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 1.F
Mtg. Date June 20, 2017
Dept. Development Services

Item Title: **Renewal of Stormwater Professional Services Agreement for Plan Review and Construction Inspections with D-MAX Engineering, Inc.**

Staff Contact: Malik Tamimi, Management Analyst

Recommendation:

Adopt a Resolution (**Attachment A**) approving an agreement to renew professional services with D-MAX Engineering, Inc. for Stormwater Plan Review and Construction Inspection Services.

Item Summary:

The Regional Water Quality Control Board (RWQCB) requires the City to review and approve technical stormwater reports related to development and redevelopment projects and conduct stormwater compliance inspections of construction sites as described in the Jurisdictional Runoff Management Plan (JRMP). The City has been in contract with D-MAX Engineering, Inc. (D-MAX) in previous years to meet the requirements of the State's Mandated Stormwater Permit. The City's current contract for the above mentioned services with D-MAX will expire on June 30, 2017. City staff recommends continuing the contract with D-MAX to assist the City in meeting these Permit requirements. The proposed agreement is for a not to exceed amount of \$50,000 to review technical reports and conduct construction inspections through June 30, 2018. The cost to review technical stormwater documents and conduct stormwater compliance inspections will be recovered through each project's developer deposit account with no direct costs to the City. Staff recommends that the City Council adopt a Resolution approving this agreement for professional services.

Fiscal Impact:

The total contract amount for as-needed services is not to exceed Fifty Thousand Dollars (\$50,000) and is recovered through each project's developer deposit account with no direct cost to the City.

Environmental Review:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorical Exemption, Section [] | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting | |

Attachments:

- A. Resolution-Exhibit 1 D-MAX Proposal

RESOLUTION NO. 2017-_____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA APPROVING AN AGREEMENT FOR PROFESSIONAL SERVICES WITH D-MAX ENGINEERING, INC. FOR STORMWATER PLAN REVIEW AND CONSTRUCTION INSPECTION SERVICES

WHEREAS, the Regional Water Quality Control Board (RWQCB) adopted Order No. R9-2013-0001 (Permit) replacing the previously issued stormwater permit Order No. R9-2007-0001; and

WHEREAS, the Permit went into effect on June 27, 2013; and

WHEREAS, the Permit required the City to develop a Jurisdictional Runoff Management Program (JRMP) no later than June 27, 2015, which the City completed; and

WHEREAS, the Permit also required the City to adopt a Lemon Grove Best Management Practices (BMP) Design Manual for development and redevelopment projects by February 2016, which the City adopted on February 2, 2016; and

WHEREAS, the City is required to review and approve technical stormwater reports for development and redevelopment projects consistent with the specifications in the Lemon Grove BMP Design Manual and to conduct stormwater compliance inspections; and

WHEREAS, the City has contracted with D-MAX Engineering, Inc. (D-MAX) to review technical stormwater reports and conduct stormwater compliance inspections through June 30, 2017; and

WHEREAS, the City's existing contract for plan review and stormwater construction compliance inspections with D-MAX will expire on June 30, 2017; and

WHEREAS, the City has requested a stormwater services agreement to continue contracting with D-MAX to meet the Permit requirements through June 30, 2018; and

WHEREAS, the cost to review technical stormwater documents and conduct stormwater construction compliance inspections will be recovered through each project's developer deposit account; and

WHEREAS, the cost to provide said services by D-MAX will be on an as-needed bases not to exceed \$50,000; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Lemon Grove, California, hereby:

1. Approves an Agreement with D-MAX (Exhibit 1) for as-needed stormwater services for the review of technical stormwater reports related to development and redevelopment projects and stormwater compliance inspections; and
2. Authorizes the City Manager or designee to execute said agreement.

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Attachment A – Exhibit 1

AGREEMENT FOR AS-NEEDED STORMWATER QUALITY SERVICES

THIS AGREEMENT is approved and effective upon the date of the last signature, by and between the CITY OF LEMON GROVE, a municipal corporation (the “CITY”), and D-Max Engineering, Inc., a water and environmental sciences firm (the “CONSULTANT”).

RECITALS

WHEREAS, the CITY desires to employ a CONSULTANT to provide stormwater construction inspection support and technical review of stormwater documents related to development and redevelopment projects on an as-needed basis for the CITY.

WHEREAS, the CITY has determined that the CONSULTANT is qualified by experience and has the ability to perform the services desired by the CITY, and the CONSULTANT is willing to perform such services.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

1. **ENGAGEMENT OF CONSULTANT.** The CITY hereby agrees to engage the CONSULTANT and the CONSULTANT hereby agrees to perform the services hereinafter set forth in accordance with all terms and conditions contained herein.

The CONSULTANT represents that all services required hereunder will be performed directly by the CONSULTANT or under direct supervision of the CONSULTANT.

2. **SCOPE OF SERVICES.** The CONSULTANT will perform services set forth in Exhibit A.

The CONSULTANT can expect to perform stormwater construction inspection support and technical review of stormwater documents related to development and redevelopment projects on an as-needed basis. This will involve the technical review of various stormwater documents and involve site visits and field inspections.

Each task will be provided to the CONSULTANT. Depending on the magnitude of an individual item, a detailed scope of work and cost proposal may be prepared, or it may simply be agreed that the work will be performed on a time and material basis. Prior to the beginning of any work, a task order may be requested that discusses the scope and fee (in the case of time and material work the fee will be a “not-to-exceed” amount.) A task order will not be valid until signed by both the CONSULTANT and the City.

The CONSULTANT shall be responsible for all research and reviews related to the work and shall not rely on CITY personnel for such services, except as authorized in advance by the CITY. The CONSULTANT shall participate in meetings if required by a task order to keep staff advised of the progress on the project.

The CITY may unilaterally, or upon request from the CONSULTANT, from time to time reduce or increase the Scope of Services to be performed by the CONSULTANT under this Agreement per project. Upon doing so, the CITY and the CONSULTANT agree to meet in good faith and confer for the purpose of negotiating a corresponding reduction or increase in the compensation associated with said change in services.

3. **PROJECT COORDINATION AND SUPERVISION.** Malik Tamimi, Management Analyst, is hereby designated as the Project Manager for the CITY and will monitor the progress and execution of this Agreement. The CONSULTANT shall assign a single Project Manager to provide supervision and have overall responsibility for the progress and execution of this Agreement for the CONSULTANT. Arsalan Dadkhah, Ph. D., PE is hereby designated as the Project Manager for the CONSULTANT.

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4. **COMPENSATION AND PAYMENT.** The compensation for the CONSULTANT shall be based on monthly billings covering actual work performed. Billings shall include labor classifications, respective rates, hours worked and reimbursable expenses, if any. The total cost for all work described within Exhibit A shall not exceed FIFTY THOUSAND DOLLARS (\$50,000) without prior written authorization from the CITY for twelve months of service. Monthly invoices will be processed for payment and remitted within thirty (30) days from receipt of invoice, provided that work is accomplished consistent with Exhibit A as determined by the CITY.

On an annual basis, the CONSULTANT may request an increase in the schedule of fees of no more than the increase in the Consumer Price Index for the previous one year period.

The CONSULTANT shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred and shall make such materials available at its office at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment under this Agreement, for inspection by the CITY and for furnishing of copies to the CITY, if requested.

5. **LENGTH OF AGREEMENT.** This Agreement will last through June 30, 2018 from the executed date of the Agreement or until all work has been completed by the CONSULTANT and accepted by the CITY, whichever occurs first.

6. **DISPOSITION AND OWNERSHIP OF DOCUMENTS.** The Memoranda, Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONSULTANT for this Project, whether paper or electronic, shall become the property of the CITY for use with respect to this Project, and shall be turned over to the CITY upon completion of the Project, or any phase thereof, as contemplated by this Agreement.

Contemporaneously with the transfer of documents, the CONSULTANT hereby assigns to the CITY and CONSULTANT thereby expressly waives and disclaims, any copyright in, and the right to reproduce, all written material, drawings, plans, specifications or other work prepared under this Agreement, except upon the CITY's prior authorization regarding reproduction, which authorization shall not be unreasonably withheld. The CONSULTANT shall, upon request of the CITY, execute any further document(s) necessary to further effectuate this waiver and disclaimer.

The CONSULTANT agrees that the CITY may use, reuse, alter, reproduce, modify, assign, transfer, or in any other way, medium or method utilize the CONSULTANT's work product for the CITY's purposes, and the CONSULTANT expressly waives and disclaims any residual rights granted to it by Civil Code Sections 980 through 989 relating to intellectual property and artistic works.

Any modification or reuse by the CITY of documents, drawings or specifications prepared by the CONSULTANT shall relieve the CONSULTANT from liability under Section 14 but only with respect to the effect of the modification or reuse by the CITY, or for any liability to the CITY should the documents be used by the CITY for some project other than what was expressly agreed upon within the Scope of this project, unless otherwise mutually agreed.

7. **INDEPENDENT CONSULTANT.** Both parties hereto in the performance of this Agreement will be acting in an independent capacity and not as agents, employees, partners or joint venture with one another. Neither the CONSULTANT nor the CONSULTANT'S employees are employees of the CITY and are not entitled to any of the rights, benefits, or privileges of the CITY's employees, including but not limited to retirement, medical, unemployment, or workers' compensation insurance.

This Agreement contemplates the personal services of the CONSULTANT and the CONSULTANT's employees, and it is recognized by the parties that a substantial inducement to

Attachment A – Exhibit 1

the CITY for entering into this Agreement was, and is, the professional reputation and competence of the CONSULTANT and its employees. Neither this Agreement nor any interest herein may be assigned by the CONSULTANT without the prior written consent of the CITY. Nothing herein contained is intended to prevent the CONSULTANT from employing or hiring as many employees, or subcontractors, as the CONSULTANT may deem necessary for the proper and efficient performance of this Agreement. All agreements by CONSULTANT with its subcontractor(s) shall require the subcontractor to adhere to the applicable terms of this Agreement.

8. **CONTROL.** Neither the CITY nor its officers, agents or employees shall have any control over the conduct of the CONSULTANT or any of the CONSULTANT's employees except as herein set forth, and the CONSULTANT expressly agrees not to represent that the CONSULTANT or the CONSULTANT's officers, agents, or employees are in any manner officers, agents, or employees of the CITY. It is understood that the CONSULTANT, its officers, agents, and employees are as to the CITY wholly independent consultants and that the CONSULTANT's obligations to the CITY are solely such as are prescribed by this Agreement.

9. **COMPLIANCE WITH APPLICABLE LAW.** The CONSULTANT, in the performance of the services to be provided herein, shall comply with all applicable State and Federal statutes and regulations, and all applicable ordinances, rules and regulations of the CITY OF LEMON GROVE, whether now in force or subsequently enacted. The CONSULTANT, and each of its subcontractors, shall obtain and maintain a current CITY OF LEMON GROVE business license prior to and during performance of any work pursuant to this Agreement.

10. **LICENSES, PERMITS, ETC.** The CONSULTANT represents and covenants that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. The CONSULTANT represents and covenants that the CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for the CONSULTANT to practice its profession.

11. **STANDARD OF CARE.** The CONSULTANT, in performing any services under this Agreement, shall perform in a manner consistent with that level of care and skill ordinarily exercised by members of the CONSULTANT's trade or profession currently practicing under similar conditions and in similar locations. The CONSULTANT shall take all special precautions necessary to protect the CONSULTANT's employees and members of the public from risk of harm arising out of the nature of the work and/or the conditions of the work site.

Unless disclosed in writing prior to the date of this Agreement, the CONSULTANT warrants to the CITY that it is not now, nor has it within the preceding five (5) years, been debarred by a governmental agency or involved in debarment, arbitration or litigation proceedings concerning the CONSULTANT's professional performance or the furnishing of materials or services relating thereto.

The CONSULTANT is responsible for identifying any unique products, treatments, processes or materials whose availability is critical to the success of the project the CONSULTANT has been retained to perform, within the time requirements of the CITY, or, when no time is specified, then within a commercially reasonable time. Accordingly, unless the CONSULTANT has notified the CITY otherwise, the CONSULTANT warrants that all products, materials, processes or treatments identified in the project documents prepared for the CITY are reasonably commercially available. Any failure by the CONSULTANT to use due diligence under this sub-paragraph will render the CONSULTANT liable to the CITY for any increased costs that result from the CITY's later inability to obtain the specified items or any reasonable substitute within a price range that allows for project completion in the time frame specified or, when not specified, then within a commercially reasonable time.

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12. **NON-DISCRIMINATION PROVISIONS.** The CONSULTANT shall not discriminate against any employee or applicant for employment because of age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. The CONSULTANT will take positive action to insure that applicants are employed without regard to their age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. Such action shall include but not be limited to the following: employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.

13. **CONFIDENTIAL INFORMATION.** The CITY may from time to time communicate to the CONSULTANT certain confidential information to enable the CONSULTANT to effectively perform the services to be provided herein. The CONSULTANT shall treat all such information as confidential and shall not disclose any part thereof without the prior written consent of the CITY. The CONSULTANT shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services to be provided herein. The foregoing obligation of this Section 13, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information; (ii) is, through no fault of the CONSULTANT, hereafter disclosed in publicly available sources of information; (iii) is already in the possession of the CONSULTANT without any obligation of confidentiality; (iv) has been or is hereafter rightfully disclosed to the CONSULTANT by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party; or (v) is disclosed according to law or court order.

The CONSULTANT shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this Agreement without the prior written consent of the CITY. In its performance hereunder, the CONSULTANT shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

CONSULTANT shall be liable to CITY for any damages caused by breach of this condition, pursuant to the provisions of Section 14.

14. **INDEMNIFICATION AND HOLD HARMLESS.** The CONSULTANT shall indemnify, defend, and hold harmless the CITY, and its elected officials, officers, agents and employees from any and all claims, demands, costs or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, agents, and subcontractors in the performance of services under this Agreement. CONSULTANT's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the CITY or its elected officials, officers, agents, and employees. CONSULTANT's indemnification obligations shall not be limited by the insurance provisions of this Agreement. The CITY AND CONSULTANT expressly agree that any payment, attorney's fees, costs or expense CITY incurs or makes to or on behalf of an injured employee under the CITY's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

15. **WORKERS' COMPENSATION.** The CONSULTANT shall comply with all of the provisions of the Workers' Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Division 4 and 5 of the California Government Code and all amendments thereto; and all similar state or Federal acts or laws applicable; and shall indemnify, and hold harmless

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the CITY and its elected officials, officers, agents, and employees from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including reasonable attorneys' fees and defense costs presented, brought or recovered against the CITY or its elected officials, officers, agents, and employees for or on account of any liability under any of said acts which may be incurred by reason of any work to be performed by the CONSULTANT under this Agreement.

16. **INSURANCE.** The CONSULTANT, at its sole cost and expense, shall purchase and maintain, and shall require its subcontractors, when applicable, to purchase and maintain throughout the term of this Agreement, the following insurance policies:

☒ A. If checked, Professional Liability Insurance (errors and omissions) with minimum limits of \$1,000,000 per occurrence.

B. Automobile insurance covering all bodily injury and property damage incurred during the performance of this Agreement, with a minimum coverage of \$1,000,000 combined single limit per accident. Such automobile insurance shall include non-owned vehicles.

C. Comprehensive general liability insurance, with minimum limits of \$1,000,000 combined single limit per occurrence, covering all bodily injury and property damage arising out of its operation under this Agreement.

D. Workers' compensation insurance covering all of CONSULTANT's employees.

E. The aforesaid policies shall constitute primary insurance as to the CITY, its elected officials, officers, agents, and employees so that any other policies held by the CITY shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the CITY of cancellation or material change.

F. Said policies, except for the professional liability and workers' compensation policies, shall name the CITY and its elected officials, officers, agents, and employees as additional insureds.

G. If required insurance coverage is provided on a "claims made" rather than "occurrence" form, the CONSULTANT shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this Agreement.

H. Any aggregate insurance limits must apply solely to this Agreement.

I. Insurance shall be written with only California admitted companies which hold a current policy holder's alphabetic and financial size category rating of not less than A VIII according to the current Best's Key Rating Guide, or a company equal financial stability that is approved by the CITY.

J. This Agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the CITY. If the CONSULTANT does not keep all of such insurance policies in full force and effect at all times during the terms of this Agreement, the CITY may elect to treat the failure to maintain the requisite insurance as a breach of this Agreement and terminate the Agreement as provided herein.

17. **LEGAL FEES.** If any party brings a suit or action against the other party arising from any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this Agreement, then in that event, the prevailing party in such action or dispute, whether by final judgment or out-of-court settlement, shall be entitled to have and recover of and from the other party all reasonable costs and expenses of suit, including reasonable attorneys' fees.

For purposes of determining who is to be considered the prevailing party, it is stipulated that attorneys' fees incurred in the prosecution or defense of the action or suit shall not be considered

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in determining the amount of the judgment or award. Attorneys' fees to the prevailing party if other than the CITY shall, in addition, be limited to the amount of attorneys' fees incurred by the CITY in its prosecution or defense of the action, irrespective of the actual amount of attorney's fees incurred by the prevailing party.

18. **MEDIATION/ARBITRATION.** If a dispute arises out of or relates to this Agreement, or the breach thereof, the parties agree first to try, in good faith, to settle the dispute by mutual negotiation between the principals, and failing that through nonbinding mediation in San Diego, California, in accordance with the Commercial Mediation Rules of the American Arbitration Association (the "AAA"). The costs of mediation shall be borne equally by the parties.

19. **TERMINATION.** This Agreement may be terminated with or without cause by the CITY. Termination without cause shall be effective only upon thirty (30) days written notice to the CONSULTANT. During said 30-day period the CONSULTANT shall perform all services in accordance with this Agreement. The CONSULTANT may terminate this agreement upon thirty (30) days prior notice in the event of a continuing and material breach by the CITY of its obligations under this Agreement including but not limited to payment of invoices. Termination with or without cause shall be effected by delivery of written Notice of Termination to the CONSULTANT as provided for herein.

This Agreement may also be terminated immediately by the CITY for cause in the event of a material breach of this Agreement that is not cured to the CITY's satisfaction within a ten (10) day prior cure period, or material misrepresentation by the CONSULTANT in connection with the formation of this Agreement or the performance of services, or the failure to perform services as directed by the CITY.

The CITY further reserves the right to immediately terminate this Agreement upon: (1) the filing of a petition in bankruptcy affecting the CONSULTANT; (2) a reorganization of the CONSULTANT for the benefit of creditors; or (3) a business reorganization, change in business name or change in business status of the CONSULTANT.

In the event of termination, all finished or unfinished Memoranda, Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONSULTANT, whether paper or electronic, shall immediately become the property of and be delivered to the CITY, and the CONSULTANT shall be entitled to receive just and equitable compensation for any work satisfactorily completed on such documents and other materials up to the effective date of the Notice of Termination, not to exceed the amounts payable hereunder, less any damages caused the CITY by the CONSULTANT's breach, if any. Thereafter, ownership of said written materials shall vest in the CITY all rights set forth in Section 6.

20. **NOTICES.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered; or sent by overnight mail (Federal Express or the like); or sent by registered or certified mail, postage prepaid, return receipt requested; or sent by ordinary mail, postage prepaid; or sent by facsimile or fax; and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if sent by overnight mail, the business day following its deposit in such overnight mail facility, (iii) if mailed by registered, certified or ordinary mail, five (5) days within California or ten (10) days if the address is outside the State of California after the date of deposit in a post office or mailbox regularly maintained by the United States Postal Service, (iv) if given by facsimile or fax, when sent. Any notice, request, demand, direction or other communication delivered or sent as specified above shall be directed to the following persons:

Attachment A – Exhibit 1

To the CITY:

Malik Tamimi, Management Analyst
CITY OF LEMON GROVE
3232 Main Street
Lemon Grove, CA 91945

To the CONSULTANT:

Arsalan Dadkhah, Ph. D., PE
D-Max Engineering, Inc.
7220 Trade Street Suite 119
San Diego, CA 92121

Notice of change of address shall be given by written notice in the manner specified in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent.

21. CONFLICT OF INTEREST AND POLITICAL REFORM ACT OBLIGATIONS. During the term of this Agreement, the CONSULTANT shall not perform services of any kind for any person or entity whose interests conflict in any way with those of the CITY OF LEMON GROVE. The CONSULTANT also agrees not to specify any product, treatment, process or material for the project in which the CONSULTANT has a material financial interest, either direct or indirect, without first notifying the CITY of that fact. The CONSULTANT shall at all times comply with the terms of the Political Reform Act and the Lemon Grove Conflict of Interest Code. The CONSULTANT shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the CITY in which the CONSULTANT has a financial interest as defined in Government Code Section 87103. The CONSULTANT represents that it has no knowledge of any financial interests that would require it to disqualify itself from any matter on which it might perform services for the CITY.

☒ If checked, the CONSULTANT shall comply with all of the reporting requirements of the Political Reform Act and the CITY OF LEMON GROVE Conflict of Interest Code. Specifically, the CONSULTANT shall:

1. Go to www.fppc.ca.gov
2. Download the Form 700: Statement of Economic Interests
3. Completely fill out the form
4. Submit the form to the Public Works Department with the signed Agreement.

The CONSULTANT shall be strictly liable to the CITY for all damages, costs or expenses the CITY may suffer by virtue of any violation of this Paragraph 21 by the CONSULTANT.

22. MISCELLANEOUS PROVISIONS.

A. *Computation of Time Periods.* If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended until 5:00 p.m. Pacific Time of the next day which is not a Saturday, Sunday or federal, state or legal holiday.

B. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

C. *Captions.* Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

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D. *No Obligations to Third Parties.* Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.

E. *Exhibits and Schedules.* The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference for all purposes.

F. *Amendment to this Agreement.* The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

G. *Waiver.* The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

H. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

I. *Entire Agreement.* This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of any party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

J. *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

K. *Construction.* The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and negotiation of this Agreement, (iii) each such party has consulted with or has had the opportunity to consult with its own, independent counsel and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this Agreement, (iv) each party and such party's counsel and advisors have reviewed this Agreement, (v) each party has agreed to enter into this Agreement following such review and the rendering of such advice, and (vi) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

Attachment A – Exhibit 1

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

CITY OF LEMON GROVE

D-MAX ENGINEERING, INC.

Lydia Romero, City Manager

Arsalan Dadkhah, President

Date

Date

APPROVED AS TO FORM:

James Lough, City Attorney

Date

D-MAX Engineering, Inc.

Consultants in Water & Environmental Sciences



June 4, 2017

Mr. Malik Tamimi
City of Lemon Grove
3232 Main Street
Lemon Grove, CA 91945

Subject: Storm Water Services for Construction and Development

Dear Mr. Tamimi:

Per your request, D-MAX Engineering, Inc. (D-MAX) is pleased to submit this proposal to provide storm water services for construction and development for the City of Lemon Grove (City). All work will be completed in accordance with the City's Jurisdictional Runoff Management Program (JRMP); San Diego Regional Water Quality Control Board (Regional Board) Order No R9-2013-0001, as amended by Order Nos. R9-2015-0001 and R9-2015-0100; and the City's grading, storm water, and post-construction BMP ordinances.

Scope of Services

Task 1. Technical Review of Storm Water Plans and Reports

We will review the following submittals and provide written comments to the City based on our review:

- Erosion control plan sheets
- Post-construction best management practice (BMP) plans, usually referred to as Storm Water Quality Management Plans (SWQMP)
 - Review of the SWQMP will also include review of grading plan sheets, where applicable, to verify that BMPs proposed in the SWQMP are also shown on the plans

When necessary, we are also available to discuss comments with project proponents in meetings, on the phone, or over email. In some cases, this direct communication helps resolve deficiencies more quickly, allowing projects to comply with requirements and gain approval for storm water submittals sooner.

Deliverables for each reviewed project will include the following:

- A completed erosion control plan review checklist, using the standard form from the JRMP, for each erosion control plan reviewed
- A review letter summarizing comments for each submitted SWQMP.
- A final electronic copy of the SWQMP and associated plan sheets (to be provided by the project applicant). The project's submitted storm water requirements applicability checklist will be required to be included with the SWQMP as an appendix.

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Malik Tamimi
City of Lemon Grove
June 4, 2017
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- A draft storm water facilities maintenance agreement (to be provided by the project applicant and recorded at the completion of the project)

We will also maintain an overall list of reviews completed by D-MAX and can provide that list to the City when necessary for reporting or other purposes.

Task 2. Construction Phase Inspections

During the construction phase, we will provide the following services:

- Attend pre-construction meeting to describe storm water requirements.
 - We will review the requirements as presented on the erosion control plan and in the SWQMP, focusing on key actions necessary to maintain compliance. The importance of erosion control BMPs, which have been the subject of multiple recent enforcement actions by the Regional Board, will also be stressed. The goal of the storm water discussion during the pre-construction meeting is to establish clear expectations for the contractor as a proactive step to minimize future risk of noncompliance.
- Conduct regular, routine inspections based on the site prioritization assigned via the process included in the JRMP.
 - During the wet season, high priority sites are inspected twice per month, medium priority sites are inspected monthly, and low priority sites are inspected as needed.
 - During site inspections, we will walk the site with the responsible person and discuss the condition of the sites and potential corrective actions during the inspection where possible. We expect that the first inspection at each project inspection will generally be longer than subsequent inspections. During all inspections after the first inspection, our inspector will document the extent to which deficiencies noted during the preceding inspections have been resolved.
 - We will document inspection results and required corrective actions on a City of Lemon Grove construction inspection form. The form will clearly identify instances of non-compliance and our recommendations for resolving the non-compliance. We will include photos, marked up schematics, or other figures as necessary to illustrate places where correction needs to be made. Inspection documentation will be delivered through email and, if necessary, by fax.
- Conduct as-needed follow-up or pre- and post-rain event inspections.
 - Additional follow-up inspections may be necessary to verify corrections required during routine inspections have been made. Often follow-up inspections are completed prior to rain to verify corrections have been made before a storm and/or after a storm to verify that BMPs performed adequately. In some cases, emailed photos demonstrating that required corrections have been made may be accepted in lieu of an onsite follow-up inspection.

Attachment A – Exhibit 1

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- Collected runoff samples as needed
 - Runoff samples will be collected as needed to assess BMP effectiveness. Samples are collected from storm runoff and are typically analyzed for turbidity and pH. Additional analyses can also be completed when necessary.
- Enforcement documentation assistance
 - If enforcement action beyond providing written correction notices based on inspections becomes necessary, we will provide the City with a written description of violation(s) noted and necessary supporting documentation to support preparation of other enforcement actions, such as notices of violation, administrative citations, and stop work orders.
 - We understand that City staff will notify the Regional Board in the event that escalated enforcement action is taken.
- Post-construction BMP installation verification
 - Following completion of all the post-construction BMPs at a site, we will perform an inspection to verify that these post-construction BMPs have been constructed or installed as proposed in the SWQMP. These inspections will check for common problems like bioretention area drains not being located high enough to provide the design amount of surface ponding.
- Final SWQMP and storm water-related plan sheets, including documentation of field changes to proposed post-construction BMPs, if applicable
 - If any field changes to post-construction BMPs are proposed, we will work with City staff to require submittal of an amendment to the SWQMP and revised plan sheets to document the change. All proposed changes are subject to the same review process described in Task 1 and should not be approved to be constructed until approved through that process. Where approved, the project proponent will also be required to submit revised electronic copies of the updated plan sheets and SWQMP for the City's files.
 - If no field changes occur, the electronic files submitted in Task 1 will be saved to document the post-construction BMPs implemented.
- Verify storm water facilities maintenance agreement has been recorded prior to project finalization.
 - We will work with the City to ensure the project's maintenance agreement is recorded with the County. We will verify that the maintenance agreement accurately described the post-construction BMPs as built, and then our understanding is that City staff will work with the project proponent to record the agreement with the County Recorder.

Deliverables for each inspected project will include the following:

- Attendance at pre-construction meetings
- A completed inspection form and associated photos for each inspection
- A memo summarizing results of storm water runoff sampling for each sampling event

Attachment A – Exhibit 1

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- Final, updated SWQMP and associated plan sheets in electronic copy, if amended or revised based on construction changes (electronic copies to be provided by project applicant)
- A spreadsheet listing all the post-construction BMPs for which installation was verified during the fiscal year. This will be provided at the end of the fiscal year as part of the annual reporting process.

We will also maintain an overall list of dates inspections have been completed for reference by City staff. Sites will be added to the inspection list based on notification of pre-construction meetings provided to D-MAX by City staff.

Cost Estimate

We will complete the tasks described above on a time and materials basis in accordance with the attached fee schedule, not to exceed \$50,000. We expect that the per inspection cost, including reporting and recordkeeping, will range from about \$250 to \$600 per inspection, with the amount depending on the extent of deficiencies noted at the sites, whether we are inspecting one site or multiple sites during a single trip to the City, and the amount of follow-up correspondence necessary following each inspection. Plan review cost will vary depending on the size and complexity of the project.

All invoices for work under this project will clearly break out costs separately for each project reviewed or inspected.

Should you have any questions regarding the above comments, please call me at (858) 586-6600, extension 22.

Sincerely,
D-MAX Engineering, Inc.

A handwritten signature in black ink that reads "Arsalan Dadkhah".

Arsalan Dadkhah, Ph.D., P.E.
Principal

Attachment A – Exhibit 1



SCHEDULE OF FEES

City of Lemon Grove Construction and Development Storm Water Services

January 1, 2016

LABOR

<u>Classification</u>	<u>Hourly Rate</u>
Word Processor	65
Drafter	75
Technician	75
Senior Technician	85
Staff Scientist/Engineer I	95
Staff Scientist/Engineer II	110
Assistant Project Scientist/Engineer	120
Project Scientist/Engineer	135
Senior Scientist/Engineer	155
Principal Scientist/Engineer	175

Field and hourly services will be charged portal to portal from our office, with a two-hour minimum.

Appearance as expert witnesses at court trials, mediation, arbitration hearings and depositions will be charged at \$200/hour. Time spent preparing for such appearances will be charged at the above standard hourly rates.

OTHER CHARGES

Subcontracted services, such as sub consultants, outside testing, drilling, and surveyors, will be charged at cost plus 15%. Other project-specific costs, such as rentals, expendable or special supplies, special project insurance, permits and licenses, shipping, subsistence, tolls and parking, outside copying/printing, etc., will be charged at cost plus 15%. Mileage will be charged at the current IRS rate. Meals, lodging, and travel expenses, when pre-approved by the City, will be charged at cost or at standard per diem rates, as applicable.

Client will be responsible for any applicable taxes in addition to the fees due for Services.